

*e: HG*  
ORIGINAL  
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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JAN 28 2008  
at 1 o'clock and 15 min P.M.  
SUE BEITIA, CLERK

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

RAYMOND E. WARE;	)	CIVIL NO. CV 04-00671 HG/LEK
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE TO
	)	ORDER REQUIRING WRITTEN
vs.	)	PROFFER AS TO DEFENDANT'S
	)	MOTION IN LIMINE REGARDING
MICHAEL CHERTOFF, Secretary,	)	PERSONNEL DECISION OTHER
Department of Homeland Security;	)	THAN PLAINTIFF'S
JOHN DOES 2-5,	)	TERMINATION AND AS TO
	)	DEFENDANT'S MOTION IN
Defendants.	)	LIMINE TO EXCLUDE
	)	WITNESSES NOT DISCLOSED BY
	)	PLAINTIFF PRIOR TO
	)	DISCOVERY DEADLINE;
	)	CERTIFICATE OF SERVICE
	)	
	)	Trial Date: February 5, 2008
	)	Time: 9:00a.m.
	)	Judge: Helen Gillmor
	)	

**PLAINTIFF'S RESPONSE TO ORDER REQUIRING WRITTEN  
PROFFER AS TO DEFENDANT'S MOTION IN LIMINE REGARDING  
PERSONNEL DECISION OTHER THAN PLAINTIFF'S TERMINATION  
AND AS TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE  
WITNESSES NOT DISCLOSED PRIOR TO DISCOVERY DEADLINE**

Comes now Plaintiff RAYMOND E. WARE, by and through his attorney, Daphne E. Barbee, and submits the following response to the Court's Order Requiring Written Proffer As To Defendant's Motion In Limine Regarding Personnel Decision Other Than Plaintiff's Termination And As To Defendant's Motion In Limine To Exclude Witnesses Not Disclosed By Plaintiff Prior To Discovery Deadline.

**WITNESSES**

1. MILAGROS DRAKE  
91-1033 Hokuwekiu Street  
Kapolei, Hawaii 96707

**SUMMARY OF EXPECTED  
TESTIMONY**

Will testify with regards to Mr. Ware's good work as a supervisor and her observations regarding working conditions at TSA Honolulu. She will rebut any accusation that Mr. Ware stole a sweater/jacket and other items while working in TSA and that he knew the SOPs and was one of the best screening supervisors working at TSA Honolulu. Ms. Drake was disclosed as a witness in Plaintiff's EEO complaint and was deposed by AUSA Helper.

2.     ROGER AOYAGI  
       TSA Employee  
       c/o Assistant U.S. Atty Tom Helper  
       300 Ala Moana Blvd., Room 6-100  
       Honolulu, Hawaii 96850

Will testify with regards to Mr. Ware's good work and knowledge of the SOPs and the retaliatory working conditions at TSA Honolulu. He asked Mr. Ware about the SOP's whenever he had a question and Mr. Ware answered him. His name was disclosed in the pretrial statements and Plaintiff's Final Witness list. Mr. Aoyagi still works for TSA Honolulu.
3.     CYNTHIA ALBERT  
       TSA Employee  
       c/o Assistant U.S. Atty Tom Helper  
       300 Ala Moana Blvd., Room 6-100  
       Honolulu, Hawaii 96850

Will testify with regards to Mr. Ware's good work, knowledge of SOP and the working conditions at TSA Honolulu. She was listed in Mr. Ware's EEO complaint before discovery cut off. Her name was disclosed prior to discovery cut off in as a witness in Plaintiff's EEOC complaint and in the pretrial statement. She still works for TSA Honolulu.

4. ALLEN WILLEY  
Former TSA Customer Complaint  
and Quality Control Manager  
1916 Pike Place, Suite 12, Box 8  
Seattle, Washington 98101-1097

Will testify regarding the work atmosphere at TSA Honolulu and retaliation. He will rebut defendant's accusations that plaintiff had numerous customer complaints. He will testify about plaintiff's knowledge of the SOP and statements made to Plaintiff after he was transferred to Hawaiian checkpoint after plaintiff's EEO complaint. He is aware of retaliatory conduct of Mr. Kamahele and participated in the Management inquiry. He served on a promotion board interview and reported discrimination towards selections to Mr. Hayakawa. He was listed as a witness before discovery cut off and submitted a declaration which is attached as an Exhibit to Plaintiff's response to Defendant's Motion in Limine, Exhibit 1. His testimony is relevant to pretext and circumstantial evidence of intent.
5. ELI WATERS, SR.  
Former AKAL and TSA Employee  
145 Muliwai Avenue  
Wahiawa, Hawaii 96786

Will testify regarding the work atmosphere at TSA and Plaintiff's work. He worked for AKAL, then as TSA screener. He will testify that Mr. Ware did his work well and was very helpful in explaining the SOP. He will testify that Ken Kamahele was retaliatory. He was listed on Plaintiff's pretrial statement and final naming of witness.

6. HANEEF BILAL ABDUL SHAFIQ  
1624 Liholiho Street #1  
Honolulu, Hawaii 96822

Will testify how the lack of promotion affected Mr. Ware emotionally. Mr. Ware expressed his emotional pain and suffering with Mr. Shafiq. He is a friend who lent assistance to Mr. Ware through his tumultuous experience at TSA Honolulu. He is listed on Plaintiff's pretrial statement and final naming of witnesses. His testimony supports Mr. Ware's request for compensatory damages.
7. CHING CHU WARE  
c/o Attorney Daphne E. Barbee  
1188 Bishop Street, Suite 1909  
Honolulu, Hawaii 96813

She is Mr. Ware's wife. She will testify regarding damages and how the lack of promotion affected Mr. Ware emotionally. She was listed as a witness on Plaintiff's EEO complaint before discovery cut off, and in Plaintiff's Pretrial statement and final naming of witness. Her testimony supports Mr. Ware's request for compensatory damages.
8. TERRY SUDOVAL  
Former TSA Employee  
11C Dole Road  
Wahiawa, Hawaii 96786

Will testify regarding Mr. Ware's work and understanding of the SOP as Screening Supervisor. She worked with Mr. Ware. She will also testify about the credibility of Mr. Talbot who alleged Mr. Ware took a sweater/jacket. She was listed in the Pretrial Statement and Final naming of witness. Her testimony is relevant to pretext.

9. CTSS Earl Yamasaka  
TSA Employee  
c/o Assistant U.S. Atty Tom Helper  
300 Ala Moana Blvd., Room 6-100  
Honolulu, Hawaii 96850

Will testify about credibility of Mr. Kamahale and retaliation. He heard Mr. Kamahale make statements such as “ he is loading bullets into is gun, and when he fired it, he was going to make sure it all came out”. Mr. Kamahale made these statements at the TSA workplace while referring to employees. Mr. Yamasaka’s statements are contained in the MSPB decision which AUSA Helper sent to the Court and Plaintiff’s Counsel on January 23, 2008. The Statements are also found in the personnel files of Mr. Kamahale which were given to Plaintiff after January 11, 2008.
10. Ms. Lauren McMillian  
Former TSA Employee  
2000 S. Cherokee  
Catoosa, Ok 74015

Will testify regarding credibility of Mr. Kamahale and retaliation with his actions and words towards employees and in using his hand as a pretend gun, shooting at employees . Her name is in the personnel files of Mr. Kamahale which was produced on January 11, 2008 by Defendant. Her statements are contained in the MSPB decision which AUSA Helper sent to the Court and Plaintiff’s Counsel on January 23, 2008.

11. Dennis Clark  
Former TSA Western Director  
1125 Kent Ave. NW  
Albuquerque, NM 87112  
Will testify regarding credibility of Mr. Kamahele. Mr. Clark wrote the termination letter to MR. Kamahele after reviewing the Managment Inquiry report, interviewing witnesses and reviewing the numerous complaints about Mr. Kamahele and the retaliatory work environment Mr. Kamahele created at TSA Honolulu. Mr. Clark's name is on the termination letter , and on documents contained in MR. Kamahele's personnel file which AUSA Helper gave to Plaintiff on January 11, 2008, after the deposition of Plaintiff. MR. Clark will authenticate the termination letter and explain the reasons for his decision to terminate Mr. Kamahele.

None of the above named witness should testify more than ½ hour on direct.

All witnesses were disclosed in the Pretrial Statement filed on December 17,2007 and in the Final naming of Witnesses filed on 1-15-09 Plaintiff disputes that the discovery deadline was continued to January 11, 2008 only for the sole purpose of conducting Plaintiff's deposition. It was plaintiff's counsel's understanding that the discovery cutoff was extended to January 11, 2008 in totality. Defendant's attorney questioned Plaintiff about his witnesses in the deposition. There is no "surprise" as to the witnesses testimony.

DATED: Honolulu, Hawaii, 1-28-08.

D E B

DAPHNE E. BARBEE  
Attorney for Plaintiff



IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

RAYMOND WARE,	)	CIVIL NO. 04-00671 HG LEK
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
MICHAEL CHERTOFF, Secretary,	)	
Department of Homeland Security;	)	
JOHN DOES 2-5,	)	
	)	
Defendants.	)	
_____	)	


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties at their last known addresses by means of hand delivery on this date.

EDWARD H. KUBO, JR., ESQ.  
U.S. Attorney  
THOMAS A. HELPER, ESQ.  
Assistant U.S. Attorney  
Rm. 6-100, PJKK Federal Building  
300 Ala Moana Blvd.  
Honolulu, Hawaii 96850

Attorneys for Federal Defendants

DATED: Honolulu, Hawaii, 1-28-08.

  
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DAPHNE E. BARBEE  
Attorney for Plaintiff